

### **REMARKS**

This responds to the Office Action dated August 9, 2010.

Claims 2, 12, and 16 are amended, no claims are cancelled, and no claims are added; as a result, claims 2-14, 16-22, and 24-25 are pending in this application.

#### **Information Disclosure Statement**

The information disclosure statement filed 6/10/2010 fails to comply with 37 CFR 1.98(a)(2). The IDS cites a piece of NPL named "On Digital Optical Disk" from "Computer Technique Issue 10" dated 12/31/2000, which cannot be found in the file. The Applicant hereby withdraws the citation of the referenced NPL named "On Digital Optical Disk" from "Computer Technique Issue 10" dated 12/31/2000. No English translation of this reference is available.

#### **The Rejection of Claims Under § 101**

Claims 2-11 and 21-22 were rejected under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter. Claim 2 is amended herein to recite a 'non-transitory' storage medium. As such, claim 2 and claims dependent thereon are statutory. The Applicant respectfully requests withdrawal of the §101 rejection.

#### **The Rejection of Claims Under § 103**

Claims 2-13, 16, and 19-22, and 24-25 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Benaloh (U.S. Patent 7,065,216) in view of Nonaka (U.S. Patent Application Publication 2002/0035492), Kyle (U.S. Patent 6,141,681), and Morito (U.S. Patent 6,782,190).

Claim 14 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Benaloh in view of Nonaka, Kyle, and Morito, further in view of Sugahra (EP 0 668695 A2).

Claim 17 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Benaloh in view of Nonaka, Kyle, and Morito, further in view of Foote (U.S. Patent 6,164,853).

Claim 18 was rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Benaloh in view of Nonaka, Kyle, and Morito, further in view of Ford (Ford, Susan, "Advanced Encryption Standard (AES) Questions and Answers", 10/2/2000, pp. 1-5).

Applicants respectfully submit that the Office Action did not make out a *prima facie* case of obviousness for at least the following reasons. Even if combined, the cited references fail to teach or suggest all of the claimed elements of Applicants' claimed embodiments.

Each of independent claims 2, 12, and 16 herein recite, in part, "program logic being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device."<sup>1</sup> Subject matter support for these amendments may be found in Applicants' specification, at least at page 10, lines 15-18<sup>2</sup> and lines 24-28,<sup>3</sup> at page 16, lines 15,<sup>4</sup> and in the Abstract.<sup>5</sup> The Office Action asserts that Kyle teaches program logic being a portion of the content. The Applicant respectfully disagrees with the breadth of this assertion. In particular, the Applicant respectfully rejects the assertion that the disclosure in Kyle enables one of ordinary skill in the art to implement any program logic, such as the program logic in Benaloh and Nonaka, as being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device. In fact, as discussed below, Kyle describes some specific narrow examples of, "a data package comprising the requested data item and its corresponding executable instructions."<sup>6</sup> One such specific example is decryption. However, there is no description in Kyle that any functionality, such as described in Benaloh or Nonaka, can be included in the executable instructions described in Kyle. Kyle also describes the use of, "[an] interpreter . . . [that] runs the local executable portion which operates on the local data portion in

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<sup>1</sup> Claims 2, 12, and 16, emphasis added.

<sup>2</sup> Specification, page 10, lines 15-18, "the content can query the player to determine the configuration of the playback environment and to perform cryptographic operations using the player's keys. Content can thus be designed so that playback will only proceed on players that provide satisfactory responses to queries," emphasis added.

<sup>3</sup> *Id.*, at lines 24-28, "Enabling the content itself to control what data regions are played, makes it possible to embed information in the output by selecting between output data versions with tiny differences. Pirate copies can be traced back to a specific player by analyzing these differences. Because the content contains and enforces its own security policies, . . ." emphasis added.

<sup>4</sup> *Id.*, at page 16, line 15, "The content can be configured to decide whether it will allow itself to be decoded," emphasis added.

<sup>5</sup> *Id.*, at Abstract, "An exemplary optical disc carries an encrypted digital video title combined with data processing operations that implement the title's security policies and decryption processes. Player devices include a processing environment (e.g., a real-time virtual machine), which plays content by interpreting its processing operations," emphasis added.

<sup>6</sup> Kyle, col. 3, lines 64-65, internal references omitted, emphasis added.

order to create compatible data which is compatible with [a] local computer application.”<sup>7</sup> Because art must be considered in its entirety,<sup>8</sup> the executable instructions of Kyle “correspond” to the data item of Kyle only in the sense that both are included in the data package of Kyle. This is not functionally equivalent to program logic being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device, as recited in each of claims 2, 12, and 16. Kyle, for example, describes, “Including decryption code as part of the data package ... (e.g., see Kyle col. 5, lines 5-15). Kyle further describes, “a data package [that can] utilize multiple decryption header subsections with a plurality of different decryption instructions corresponding to different encryption methods applied to a single data item and/or the other various header subsections of the data package.” (e.g., see Kyle col. 5, lines 24-32, emphasis added). However, as described in Kyle, the executable instruction portion of the data package only operates on the single data item of the package. Kyle does not describe a system that provides program logic being a portion of the content and loaded on a playback device that can interrogate the playback environment, reduce output quality if a result of the interrogation of the playback environment is uncertain, authenticate a revocations list, provide a set of decryption keys for a plurality of versions of the content, and control playback of the entire content. Thus, Kyle is not functionally equivalent to program logic being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device as claimed. Nothing in Kyle discusses or suggests program logic being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device. Accordingly, the cited references, taken singly or in combination, fail to disclose these elements.

While Benaloh is directed to methods and systems in which, “digital content is provided and comprises multiple partition sets, with each partition set comprising a first partition and at least one different version of the first partition,”<sup>9</sup> Benaloh is silent with respect to program logic

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<sup>7</sup> *Id.*, col. 4, lines 2-5.

<sup>8</sup> *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984), *see* MPEP 2141.02(VI), (“A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention,” emphasis added).

<sup>9</sup> Benaloh, col. 1, lines 62-66.

being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device, as recited in each of claims 2, 12, and 16. Further, Benaloh stores its decryption code on the playback device, and does not therefore load the program logic with the content as currently claimed. Although Nonaka is directed to a system, apparatus, and method, “for performing rights processing of content data encrypted with content key data based on usage control policy (UCP) data,”<sup>10</sup> nothing in Nonaka discusses or suggests program logic being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device, as recited in each of claims 2, 12, and 16. Despite discussion in Morito of, “DVD disks with unique serial numbers stored in a read only part of the disk for recording data,”<sup>11</sup> Morito fails to disclose or suggest program logic being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device, as recited in each of claims 2, 12, and 16.

Additionally, the claims 2, 12, and 16 as recited herein include:

the program logic further configured to perform a security check that interrogates a playback environment of the playback device and to verify at least one of: a playback device identity, including at least one of a player serial number, specific subscriber information, a player model, or a player software version, and a user identity, including at least one of a user name, geographical region, email address, or a web address, the program logic further configured to reduce output quality if a result of the interrogation of the playback environment is uncertain ...

A prior Office Action asserted the following:

Benaloh discloses media verification logic configured to perform a security check that interrogates a playback environment to verify at least one of playback device identity, including at least one of player serial number, specific subscriber information, player model, or player software version, or a result of cryptographic processing adapted to fail verification operation if executed on at least one of an unauthorized or revoked or compromised playback device (Column 7, lines 31-47; and Column 9, line 61 to Column 11, line 12)

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<sup>10</sup> Nonaka, paragraph 0019.

<sup>11</sup> Morito, abstract, internal enumerations omitted.

After thorough review of Benaloh and particularly the portions cited in the prior Office Action, the Applicants can find no support in Benaloh for any verification logic that interrogates a playback environment of playback device as claimed. Benaloh discloses unique key collections associated with a corresponding content player that can be used to decrypt partitions or clips; but there is no disclosure of program logic configured to perform a security check that interrogates a playback environment of the playback device and to verify at least one of: a playback device identity, including at least one of a player serial number, specific subscriber information, a player model, or a player software version, and a user identity, including at least one of a user name, geographical region, email address, or a web address, the program logic further configured to reduce output quality if a result of the interrogation of the playback environment is uncertain. As such, Benaloh does not teach or suggest the elements of the amended claims.

The current Office Action, at page 8, asserts that Nonaka discloses these elements of the present claims. However, the cited portions of Nonaka merely mention checking the owners of a recording medium. There is no teaching in Nonaka of the elements presently claimed wherein program logic is configured to perform a security check that interrogates a playback environment of the playback device and to verify at least one of: a playback device identity, including at least one of a player serial number, specific subscriber information, a player model, or a player software version, and a user identity, including at least one of a user name, geographical region, email address, or a web address, the program logic further configured to reduce output quality if a result of the interrogation of the playback environment is uncertain. As such, Nonaka does not teach or suggest the elements of the amended claims.

For at least these reasons, the scope and content of Benaloh, Nonaka, Kyle, and Morito do not teach or suggest Applicants' claimed subject matter or support rational inferences that one of ordinary skill in the art reasonably would be expected to draw to reach Applicants' claimed subject matter. As a result, a determination of obviousness is not established with respect to any of independent claims 2, 12, and 16, and their respective dependent claims. Thus, Applicants respectfully request withdrawal of the §103 rejections with respect to claims 2-13, 16, 19-22, and 24-25.

Claim 14 was rejected under 35 U.S.C. § 103(a) as being obvious over Benaloh in view of Nonaka, Kyle, and Morito, further in view of Sugahra (EP 0 668 695 A2). As discussed

above, Benaloh, Nonaka, Kyle, and Morito fail to disclose or suggest program logic being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device. Further, the cited references fail to disclose or suggest other elements of the pending claims. Applicants respectfully submit that claim 14 is not obvious over Benaloh in view of Nonaka, Kyle, and Morito, further in view of Sughara. Thus, Applicants respectfully request withdrawal of the §103 rejections with respect to claim 14.

Claim 17 was rejected under 35 U.S.C. § 103(a) as being obvious over Benaloh in view of Nonaka, Kyle, and Morito, further in view of Foote (U.S. 6,164,853). As discussed above, Benaloh, Nonaka, Kyle, and Morito fail to disclose or suggest program logic being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device. Further, the cited references fail to disclose or suggest other elements of the pending claims. Applicants respectfully submit that claim 17 is not obvious over Benaloh in view of Nonaka, Kyle, and Morito, further in view of Foote. Thus, Applicants respectfully request withdrawal of the §103 rejections with respect to claim 17.

Claim 18 was rejected under 35 U.S.C. § 103(a) as being obvious over Benaloh in view of Nonaka, Kyle, and Morito, further in view of Ford (Ford, Susan, "Advanced Encryption Standard (AES) Questions and Answers," 10/2/2000, pp. 1-5). As discussed above, Benaloh, Nonaka, Kyle, and Morito fail to disclose or suggest program logic being a portion of the content and adapted for execution on a playback device in order to play another portion of the same content, the program logic being loaded with the content on the playback device. Further, the cited references fail to disclose or suggest other elements of the pending claims. Applicants respectfully submit that claim 18 is not obvious over Benaloh in view of Nonaka, Kyle, and Morito, further in view of Ford. Thus, Applicants respectfully request withdrawal of the §103 rejections with respect to claim 18.

The Applicants respectfully submit that for at least the reasons set forth above and previously submitted, the pending claims are patentable over the art of record. The Applicants respectfully request withdrawal of the outstanding claim rejections and allowance of the pending claims.

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**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 406-4855 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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By



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